

12-011 Rates for Nursing Facility Services

12-011.01 Purpose: This section -

1. Satisfies the requirements of the State Plan for Medical Assistance and 42 CFR 447.250 through 42 CFR 447.272;
2. Adopts rate setting procedures which recognize the required level and quality of care as prescribed by all governmental entities (including, but not limited to, federal, state and local entities);
3. Establishes effective accountability for the disbursement of Medical Assistance appropriations; and
4. Provides for public notice of changes in the statewide method or level of payment pursuant to the requirements of 42 CFR 447.253.

This rate plan is effective July 1, 1992.

12-011.02 Definitions: The following definitions apply to the nursing facility rate determination system.

Allowable Cost: Those facility costs which are included in the computation of the facility's per diem. The facility's reported costs may be reduced because they are not allowable under Medicaid or Medicare regulation, or because they are limited under 471 NAC 12-011.06.

Consumer Price Index (CPI): Whenever used in this section, CPI is the Consumer Price Index, All Urban Consumers, Average for all United States Cities, as determined by the U.S. Department of Labor, Bureau of Labor Statistics.

Level of Care: The classification (see 471 NAC 12-013.01) of each resident based on his/her acuity level.

Median: A value or an average of two values in an ordered set of values, below and above which there is an equal number of values.

Nursing Facility: An institution (or a distinct part of an institution) which meets the definition and requirements of Title XIX of the Social Security Act, Section 1919.

Transmittal # MS-92-12

Supersedes

Approved

APR 16 1993

Effective

JUL 01 1992

Transmittal # MS-92-4

Per Diem Rates: Rates paid to nursing facilities under the Nebraska Medical Assistance Program. The rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities to provide services in conformance with state and federal laws, regulations, and quality and safety standards.

Urban: Urban areas are Dakota, Washington, Douglas, Sarpy, and Lancaster counties.

Waivered Facility: Facilities for which the State Certification Agency has waived professional nurse staffing requirements of OBRA 87 are classified as "waivered" if the total number of waived days exceeds 90 calendar days at any time during the reporting period.

Weighted Resident Days: A facility's inpatient days, as adjusted for the acuity level of the residents in that facility (see 471 NAC 12-013.03 and 12-013.04).

Other definitions which apply in this section are included in Nebraska Department of Health's Regulations and Standards for Homes for the Aged or Infirm and Regulations and Standards Governing Centers for the Developmentally Disabled and appropriate federal regulations governing Title XIX and Title XVIII.

12-011.03 General Information: Wherever applicable, the principles of reimbursement for provider's cost and the related policies under which the Medicare extended care facility program functions (Medicare's Provider Reimbursement Manual (HIM-15) updated by "Provider Reimbursement Manual Revisions" in effect as of July 1, 1991) are used in determining the cost for Nebraska nursing facilities with exceptions noted in this section. Chapter 15, Change of Ownership, of HIM-15 is excluded in its entirety.

That portion of a provider's allowable cost for the treatment of Medicaid patients is payable under the Nebraska Medical Assistance Program (NMAP) except as limited in this section. Because Title XVIII principles of reimbursement are further restricted by this regulation, the aggregate payments by the Department do not exceed amounts which would be paid under Title XVIII principles of reimbursement for extended care facilities.

12-011.04 Allowable Costs: The following items are allowable costs under NMAP.

Transmittal # MS-92-12

Supersedes

Approved APR 1 1993

Effective JUL 01 1992

Transmittal # MS-92-4

12-011.04A Cost of Meeting Licensure and Certification Standards:
Allowable costs for meeting licensure and certification standards are those costs incurred in order to -

1. Meet the definition and requirements for a Nursing Facility of Title XIX of the Social Security Act, Section 1919;
2. Comply with the standards prescribed by the Secretary of Health and Human Services (HHS) for nursing facilities or centers for the developmentally disabled in 42 CFR 442;
3. Comply with requirements established by the Nebraska Department of Health, the state agency responsible for establishing and maintaining health standards, under 42 CFR 431.610; and
4. Comply with any other state law licensing requirements necessary for providing nursing facility or developmental disability center services, as applicable.

12-011.04B Routine Services: Routine nursing facility services include regular room, dietary, and nursing services; social services where required by certification standards; minor medical supplies; oxygen; the use of equipment and facilities; and other routine services. Examples of items that routine services may include are -

1. All general nursing services, including administration of oxygen and related medications; collection of all laboratory specimens as ordered by the physician, such as: blood, urine; handfeeding; incontinency care; tray service; normal personal hygiene which includes bathing, skin care, hair care (excluding professional barber and beauty services), nail care, shaving, and oral hygiene; enema; etc.;
2. Maintenance Therapy: facility staff shall aid the resident as necessary, under the resident's therapy program, with programs intended to maintain the function(s) being restored;
3. Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, bedpans, etc.;

Transmittal # MS-92-12

Supersedes

Approved

APR 16 1993

Effective

JUL 01 1993

Transmittal # MS-92-4

4. Items stocked at nursing stations or on each floor in gross supply and distributed or used individually in small quantities, such as alcohol, applicators, cotton balls, bandaids, incontinency care products, colostomy supplies, catheters, irrigation equipment, tape, needles, syringes, I.V. equipment, T.E.D. (anti-embolism) stockings, hydrogen peroxide, O-T-C enemas, tests (Clinitest, Testape, Ketostix), tongue depressors, hearing aid batteries, facial tissue, personal hygiene items (which includes soap, lotion, powder, shampoo, deodorant, tooth-brushes, toothpaste, denture cups and cleaner, mouth wash, peri-care products, etc.), etc.;
5. Items which are used by individual patients but which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, gerichairs, traction equipment, alternating pressure pad and pump, other durable medical equipment, etc.;
6. Special dietary supplements used for tube feeding or oral feeding, such as an elemental high nitrogen diet, even if written as a prescription item by a physician. These supplements have been classified by the Food and Drug Administration as a food rather than a drug;
7. Laundry services, including personal clothing; and
8. Cost of providing basic cable television service, including applicable installation charge, to individual rooms. This is not a mandatory service.

12-011.04C Ancillary Services: Ancillary services are those services which are either provided by or purchased by a facility and are not properly classified as "routine services." The facility shall contract for ancillary services not readily available in the facility.

If ancillary services are provided by a licensed provider or another licensed facility, e.g., physician, dentist, etc., the provider shall submit a separate claim for each client served.

Respiratory therapy is an allowable cost.

Department-required independent QMRP assessments are considered ancillary services.

Transmittal # MS-92-12

Supersedes

Approved

APR 16 1993

Effective

JUL 01 1992

Transmittal # MS-92-4

12-011.05 Unallowable Costs: The following costs are specifically unallowable:

1. Provisions for income tax;
2. Fees paid board of directors;
3. Non-working officers' salaries;
4. Promotion expenses, except for promotion and advertising as allowed in HIM-15. Yellow Page display advertising is not allowable; one Yellow Page informational listing per local area telephone directory is allowable;
5. Travel and entertainment, other than for professional meetings and direct operations of facility. This may include costs of motor homes, boats, and other recreational vehicles, including operation and maintenance expenses; real property used as vacation facilities; etc.;
6. Donations;
7. Expenses of non-nursing home facilities and operations included in expenses;
8. Insurance and/or annuity premiums on the life of the officer or owner;
9. Bad debts, charity, and courtesy allowances;
10. Costs and portions of costs which are determined by the Department not to be reasonably related to the efficient production of service because of either the nature or amount of the particular expenditure;
11. Services provided by the clients' physicians or dentists, drugs, laboratory services, radiology services, or services provided by similar independent licensed providers, except services provided by state operated facilities. These exclusions are paid separately;
12. Return on equity;
13. Carry-over of costs "lost" due to any limitation in this system; and
14. Expenses for equipment, facilities, and programs (e.g., recreation, trips) provided to clients which are determined by the Department not to be reasonably related to the efficient production of service because of either the nature or amount of the particular service. Examples include, but are not limited to, swimming pools, tennis courts, handball courts.

Transmittal # MS-92-12

Supercedes Approved APR 16 1993 Effective JUL 01 1992

Transmittal # MS-92-4

12-011.06 Limitations for Rate Determination: The Department applies the following limitations for rate determination.

12-011.06A Expiration or Termination of License or Certification:
The Department does not make payment for care provided 30 days after the date of expiration or termination of the provider's license or certificate to operate under NMAP. The Department does not make payment for care provided to individuals who were admitted after the date of expiration or termination of the provider's license or certificate to operate under NMAP.

12-011.06B Total Inpatient Days: In computing the provider's allowable per diem rate (inclusive of the interim rate, the retroactively adjusted final rate, audited rate, etc.), total inpatient days are the greater of the actual occupancy or eighty-five (85) percent of total licensed and certified bed days. For new construction (entire facility or bed additions) or a facility reopening, total inpatient days are the greater of the actual occupancy or fifty (50) percent of total licensed and certified bed days available during the first year of operation, beginning with the first day patients are admitted for care.

An inpatient day is:

1. A day on which a patient occupies a bed at midnight. When a client is admitted to a facility and dies before midnight on the same day, one day is counted and paid; or
2. A day on which the bed is held for hospital leave or therapeutic home visits.

Payment for holding beds for patients in acute hospitals or on therapeutic home visits is permitted if the policy of the facility is to hold beds for private patients and if the patient's bed is actually held. Bedholding is allowed for fifteen (15) days per hospitalization and for up to eighteen (18) days of therapeutic home visits per calendar year.

Medicaid inpatient days are days for which claims (Printout MC-4, "Long Term Care Facility Turnaround Billing Document") from the provider have been processed by the Department. The Department will not consider days for which a claim has not been processed unless the provider can show justification to the Department's satisfaction. Days for which the client's Medicaid eligibility is in a "spenddown" category are not considered Medicaid inpatient days.

Transmittal # MS-92-12

Supercedes

Approved APR 16 1992

Effective JUL 01 1992

Transmittal # MS-92-4

12-011.06C Start-Up Costs: All new providers entering NMAP shall capitalize and amortize their allowable start-up costs. Only those costs incurred three months before the admission of the first client (private or Medicaid) may be capitalized and amortized. These costs must be documented and submitted with the provider's initial cost report. Amortization of these costs begins on the date of the first admission and must extend over at least 36 months, but must not exceed 60 months.

Start-up costs include, for example, administrative and nursing salaries, heat, gas, electricity, taxes, insurance, interest, employee training costs, repairs and maintenance, housekeeping, and any other allowable costs incidental to the start-up period.

12-011.06D Common Ownership or Control: Costs applicable to services, facilities, and supplies furnished to a provider by organizations related to the provider by common ownership or control must not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere. An exception to the general rule applies if the provider demonstrates by convincing evidence to the Department's satisfaction that -

1. The supplying organization is a bona fide separate organization;
2. A substantial part of the supplying organization's business activity is transacted with other than the provider and organizations related to the supplier by common ownership or control, and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization;
3. The services, facilities, or supplies are those which commonly are obtained by institutions like the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by similar institutions; and
4. The charge to the provider is in line with the charge for those services, facilities, or supplies in the open market, and is no more than the charges made under comparable circumstances to others by the organization for those services, facilities, or supplies.

When all conditions of this exception are met, the charges by the supplier to the provider for services, facilities, or supplies are allowable as costs.

Transmittal # MS-92-12

Supercedes

Approved

APR 16 1993

Effective

JUL 01 1992

Transmittal # MS-92-4

12-011.06E Leased Facilities: Allowable costs for leased facilities (including, but not limited to, leases, subleases, and other similar types of contractual arrangements), including all personal property covered in the lease, entered into after July 31, 1982, must not exceed the actual cost of the lessor for depreciation, interest on lessor's mortgage, and other costs of ownership incurred as a condition of the lease. If the lessor sells the facility, all provisions of 471 NAC 12-011.06H and J will apply, except that the Department does not recapture depreciation on leases between unrelated parties. All interest must be specifically identified or reasonably allocated to the asset. All actual costs to the lessor are computed according to the rate setting principles of this section. If costs are claimed for leases, the lease agreement must provide that the lessor will -

1. Provide an itemized statement at the end of each provider's report period which includes depreciation, interest, and other costs incurred as a condition to the lease; and
2. Make records available for audit upon request of the Department, the Department of Health and Human Services (HHS), or their designated representatives.

12-011.06F Home Office Costs - Chain Operations: A chain organization consists of a group of two or more health care facilities which are owned, leased, or through any other device, controlled by one organization. Chain organizations include, but are not limited to, chains operated by proprietary organizations and chains operated by various religious, charitable, and governmental organizations. A chain organization may also include business organizations which are engaged in other activities not directly related to health care.

Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to the facilities in the chain. The home office of a chain is not a provider in itself; therefore, its costs may not be directly reimbursed by the program. The relationship of the home office to the Medicaid program is that of a related organization to participating providers. To the extent the home office furnishes services related to patient care to a provider, the reasonable costs of such services are includable in the cost report. Costs allocated under HIM-15, Section 2150.3.B, shall be limited to direct, patient care services provided at the facility, and shall be included in the applicable Cost Category. Costs allocated under HIM-15, Sections 2150.3C and 2150.3D, shall be included in the Administration Cost Category. The NMAP does not distinguish between capital related and non-capital related interest expense and interest income (see HIM-15, Section 2150.3E and 2150.3F).

Transmittal # MS-92-12

Supersedes _____ Approved APR 16 1993 Effective JUL 01 1992

Transmittal # MS-92-4

12-011.06G Interest Expense: Interest cost will not be allowed on loan principal balances which are in excess of 80 percent of the fixed asset cost recognized by the Department for long term care. This limitation does not apply to government owned facilities.

12-011.06H Recognition of Fixed Cost Basis: The fixed cost basis for facilities purchased as an ongoing operation or for newly constructed facilities or facility additions shall be the lesser of -

1. The acquisition cost of the asset to the new owner;
2. The acquisition cost which is approved by the Nebraska Department of Health Certificate of Need process; or
3. For facilities purchased as an ongoing operation on or after December 1, 1984, the allowable cost of the asset to the owner of record as of December 1, 1984, or for assets not in existence as of December 1, 1984, the first owner of record thereafter.

471 NAC 12-011.08D, Recapture of Depreciation, will apply to this part.

Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made are not allowable.

This part will not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before December 1, 1984.

Transmittal # MS-92-12

Supercedes Approved APR 16 1993 Effective JUL 01 1992

Transmittal # MS-92-4

12-011.06J Certificate of Need Approved Projects: Notwithstanding any other provision of 471 NAC 12-011, et seq., the fixed costs reported to the Department of Social Services for a Department of Health Certificate of Need reviewed project shall not exceed the amount that would result from the application of the approved project provisions including the estimated interest rates and asset lives.

Certificate of Need provisions recognized by the Department of Social Services, for the purposes of rate setting, shall be the original project as approved, the approved project amendments submitted within 90 days of the transfer of ownership or opening of newly constructed areas, and the allowable cost overruns disclosed in a final project report submitted to the Department of Health within 180 days of the opening of newly constructed areas. Project amendments and project reports submitted to the Department of Health Certificate of Need after the periods defined above will be recognized upon approval beginning on the date that the amendment or report is received by the Department of Health Division of Hospital and Medical Care Facilities. The added costs incurred prior to the date the late amendment or report is filed will not be recognized retroactively for rate setting.

12-011.06K Salaries of Administrators, Owners, and Directly Related Parties: Compensation received by an administrator, owner, or directly related party is limited to a reasonable amount for the documented services provided in a necessary function. Reasonable value of the documented services rendered by an administrator is determined from Medicare regulations and administrator salary surveys for the Kansas City Region, adjusted for inflation by the Department of Health and Human Services. All compensation received by an Administrator is included in the Administration Cost Category, unless an allocation has prior approval from the Department. Reasonable value of the documented services rendered by an owner or directly related party who hold positions other than administrator is determined by: (1) comparison to salaries paid for comparable position(s) within the specific facility, if applicable, or, if not applicable, then (2) comparison to salaries for comparable position(s) as published by the Nebraska Department of Personnel in the "State of Nebraska Salary Survey".

Transmittal # MS-92-12

Supersedes

Approved

APR 16 1993

Effective

JUL 01 1992

Transmittal # MS-92-4